

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
Acumen Communications)	File No.: EB-FIELDWR-13-00006185
)	NAL/Acct. No.: 201432900001
Licensee of Station WQJF635,)	FRN: 0016049017
Los Angeles, CA)	

MEMORANDUM OPINION AND ORDER

Adopted: September 15, 2015

Released: September 16, 2015

By the Regional Director, Western Region, Enforcement Bureau:

1. We dismiss as untimely a Petition for Reconsideration filed by Acumen Communications (Acumen), licensee of private land mobile radio service station WQJF635 (Station), Los Angeles, California, seeking reconsideration of the Forfeiture Order issued by the Enforcement Bureau. In the Forfeiture Order, the Enforcement Bureau imposed a forfeiture of \$17,000 against Acumen for operating the Station on a frequency not authorized on its license, and for failing to take reasonable precautions to avoid causing harmful interference to United States Coast Guard operations.

2. Section 405(a) of the Communications Act of 1934, as amended (Act),¹ and Section 1.106(f) of the Commission's rules (Rules)² require the filing of a petition for reconsideration with the Commission's Secretary in Washington, D.C. within thirty days from the date of public notice of the final action.³ In this case, public notice of the Forfeiture Order⁴ occurred upon release on June 26, 2015.⁵ The due date for a petition for reconsideration, taking into account holidays, was July 27, 2015.⁶ Thus, Acumen should have filed its Petition⁷ with the Commission's Secretary in Washington, D.C. no later than July 27, 2015.⁸ There is no evidence that a copy was ever received by the Secretary of the Commission by July 27, 2015. Instead, a copy of the Petition was received in the FCC Mail Room on August 3, 2015. As Section 1.106(i) of the Rules explicitly states, "petitions submitted directly to staff without submission to the Secretary shall not be considered to have been properly filed."⁹ Accordingly, because Acumen failed to both properly and timely file its Petition, we dismiss the Petition on procedural grounds.¹⁰

¹ 47 U.S.C. § 405(a).

² 47 C.F.R. § 1.106(f).

³ See 47 C.F.R. § 1.106(i).

⁴ See *Acumen Communications*, Forfeiture Order, 30 FCC Rcd 6472 (Enf. Bur. 2015) (Forfeiture Order) *assessing forfeiture proposed in* Notice of Apparent Liability for Forfeiture, 28 FCC Rcd 16349 (Enf. Bur. 2013).

⁵ See 47 C.F.R. § 1.4(b).

⁶ See 47 C.F.R. § 1.4(j).

⁷ See *Acumen Communications*, Petition for Reconsideration (filed Aug. 3, 2015) (Petition).

⁸ See 47 C.F.R. §§ 1.4(j), 1.106(f).

⁹ 47 C.F.R. § 1.106(i).

¹⁰ See *Wash. Broad. Mgmt. Co., Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 6607 (2000) (dismissing a petition for reconsideration filed eight days late).

3. Were we to reach the merits of Acumen's Petition, we would find no basis for reconsideration.¹¹ We agree that the forfeiture was supported by sufficient evidence that Acumen operated the Station on a frequency not authorized on its license, and failed to take reasonable precautions to avoid causing harmful interference, thereby willfully and repeatedly violating Section 301 of the Act and Sections 1.903(a) and 90.403(e) of the Rules.¹² We also agree that there was sufficient evidence that Acumen's violations were willful, even if they were not intentional.¹³ Finally, we agree that Acumen repeatedly violated the rules, as the violations took place over two days in January 2013.¹⁴ However, we need not reach these issues given that Acumen's Petition is procedurally defective and must be dismissed for failing to comply with the requirements of the Act and the Rules.

4. Accordingly, **IT IS ORDERED** that, pursuant to Section 405 of the Act¹⁵ and Section 1.106 of the Rules,¹⁶ the Petition for Reconsideration filed by Acumen Communications **IS DISMISSED**.

5. **IT IS FURTHER ORDERED** that, pursuant to Section 503(b) of the Act and Sections 0.111, 0.311, and 1.80 of the Rules, Acumen Communications **IS LIABLE FOR A MONETARY FORFEITURE** of seventeen thousand dollars (\$17,000) for willfully and repeatedly violating Section 301 of the Act and Sections 1.903(a) and 90.403(e) of the Rules.¹⁷

6. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within thirty (30) calendar days after the release date of this Memorandum Opinion and Order.¹⁸ If the forfeiture is not paid within the period specified, the case may be referred to the U.S. Department of Justice for enforcement of the forfeiture pursuant to Section 504(a) of the Act.¹⁹

7. Payment of the forfeiture must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account Number and FRN referenced above. Acumen Communications shall send electronic notification of payment to WR-Response@fcc.gov on the date said payment is made. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.²⁰ When completing the FCC Form 159, enter the Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Below are additional instructions that should be followed based on the form of payment selected:

¹¹ Reconsideration is appropriate only where the petitioner either demonstrates a material error or omission in the underlying order or raises additional facts not known or not existing until after the petitioner's last opportunity to present such matters. See 47 C.F.R. § 1.106(c); *EZ Sacramento, Inc.*, Memorandum Opinion and Order, 15 FCC Rcd 18257, 18257, para. 2 (Enf. Bur. 2000) (citing *WWIZ, Inc.*, Memorandum Opinion and Order, 37 FCC 685, 686 (1964), *aff'd sub. nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 383 U.S. 967 (1966)). A petition for reconsideration that simply reiterates arguments that were previously considered and rejected will be denied. *EZ Sacramento, Inc.*, 15 FCC Rcd at 18257, para. 2; 47 C.F.R. § 1.106(p).

¹² Forfeiture Order, 30 FCC Rcd at 6473–75, paras. 6–9.

¹³ *Id.* at 6474–75, para. 9.

¹⁴ *Id.*

¹⁵ 47 U.S.C. § 405.

¹⁶ 47 C.F.R. § 1.106.

¹⁷ 47 U.S.C. §§ 301, 503(b); 47 C.F.R. §§ 0.111, 0.311, 1.80, 1.903(a), 90.403(e).

¹⁸ 47 C.F.R. § 1.80.

¹⁹ 47 U.S.C. § 504(a).

²⁰ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.
- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

8. Any request for making full payment over time under an installment plan should be sent to: Chief Financial Officer—Financial Operations, Federal Communications Commission, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554.²¹ Questions regarding payment procedures should be directed to the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

9. **IT IS FURTHER ORDERED** that a copy of this Memorandum Opinion and Order shall be sent by first class mail and certified mail, return receipt requested, to Acumen Communications, 10670 S. La Cienega Blvd., Suite C, Inglewood, CA 90304.

FEDERAL COMMUNICATIONS COMMISSION

Rebecca L. Dorch
Regional Director
Western Region
Enforcement Bureau

²¹ See 47 C.F.R. § 1.1914.